IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/01/2004

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

W.P.No.14057 of 1997 and W.P.No. 6226 of 1998

S. Padmavathi .. Petitioner in
both W.Ps.

-Vs-

1. The Director-General of
National Power Training Institute
NPTI Complex, Sector 23
Faridabad, Haryana 121 003.

2. The Executive Director
National Power Training Institute
Regional Power Training Institute Respondents in
Block 14/21, Neyveli 607 803. .. both W.Ps.

Petitions under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioner : Mr. Arul Murugan
For M/s. Muthumani Doraisami

For Respondents : Mrs. Radha Gopalan

:O R D E R

The learned counsel for the petitioner is not ready. Therefore, I am constrained to hear the learned counsel appearing for the respondents at length.

2. Both the writ petitions are filed by the same petitioner.

3. In brief, the petitioner, who was recruited to the post of Assistant Director in National Power Training Institute under the respondents, qualified with B.E. (Instrumentation), by the proceedings of the first respondent dated 8.4.1996 and completed her probation period of one year on 22.4.1997 itself, was terminated by the proceedings of the first respondent dated 26.8.1997, which reads as follows:
" National Power Training Institute

A Government of India Society

No.4(A)/169/96-NPTI/HQ/2841 Dated:- 26.8.97

Order of Termination of Service issued under the Proviso to Subrule(1) of Rule '5' of the Central Civil Services (Temporary Service) Rules, 1965.

In pursuance of the Proviso to Sub-rule (1) of Rule '5' of the Central Civil Services (Temporary Service) Rules, 1965, I, V.K.Sood, Director General, NPTI, hereby terminate forthwith the services of Smt.S. Padmavathy, Asstt. Director (Tech./Faculty) and direct that she shall be entitled to claim a sum equivalent to the amount of her pay plus allowances for the period of Notice at the same rates at which she was drawing them immediately before the termination of her service, or, as the case may be, for the period by which such notice falls short of one month. (emphasis supplied)
Sd/-
(V.K.SOOD)
Director General
Smt.S.Padmavathy
Asstt.Director (Tech./Faculty)
N.P.T.I.
RPTI, Neyveli."

4. Consequent to the said order of termination dated 26.8.1997, the second respondent issued a circular dated 8.9.1997 to all the sections of the Institute to initiate appropriate action if required with respect to the dues if any from the petitioner. Aggrieved by the said order of termination dated 26.8.1997 and the consequential circular dated 8.9.1997, the petitioner filed W.P.No.14057 of 1997 seeking a writ of Certiorari calling for the records relating to the proceedings of the second respondent in Proceedings No.RPTI/NEY/ADM/SP/97/3437 dated 8.9.1997 which has been passed pursuant to the order of the first respondent in Proceedings No.4(A)/169/96/NPTI/HQ/2841 dated 26.8.199 7 and quash the same.

5. When the said writ petition came up before this Court on 12.9.199 7 for admission, this Court ordered notice of motion returnable by four weeks and also granted interim stay, since the impugned order of termination had been passed without notice, as required under Section 5(1) of the Central Civil Services Rules (Temporary Service) Rules, 1 965 (in short the "Rules").

6. The interim stay granted was subsequently vacated by an order of this Court dated 17.4.1998 on the ground that the stay granted on 12.9.1997 was not extended thereafter, however without going in to the merits of the case. Therefore, the first respondent, by proceedings dated 21/22.4.1998 informed the petitioner that she cannot attend the office and function as Assistant Director (Tech./Faculty) in the Institute and the said proceedings of the first respondent was duly communicated to the petitioner by the second respondent in his proceedings dated 23.4.1998 and hence, the petitioner filed W.P.No.6226 of 1998 seeking a writ of Certiorari calling for the records relating to the order of the first respondent in No.4(A)/169/96-NPTI HQ/150

dated 21 /22.4.1998 and the second respondent in No.RPTI/NEY/ADM/SP/320 dated 23.4.1998 and quash the same.

7. A detailed counter affidavit was filed on behalf of the respondents in both the writ petitions, traversing the averments made by the petitioner on merits as well as with respect to the power to terminate the service of the petitioner without notice, by exercising the power under Rule 5(1) of the Rules.

8. A bare reading of the impugned proceedings dated 26.8.1997 makes it clear that the first respondent proposed to exercise the powers conferred under Rule 5(1) of the Rules. The amended proviso of the same reads as follows:

"5. Termination of temporary service:-
(1)(a) The services of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant;
(b) The period of such notice shall be one month:
Provided that the services of any such government servant may be terminated forthwith and on such termination the government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

9. The impugned order of termination is assailed by the petitioner on the main ground that the same is vitiated by violation of principles of natural justice for not giving a fair and reasonable opportunity either by giving one months notice or a sum equivalent to the amount of her pay plus allowances for the period of the notice at the same rates at which she was drawing them immediately before the termination of her services in lieu of such notice.

10. Per contra, learned counsel appearing for the respondents contends that, even though there are good and sufficient reasons to terminate the services of the petitioner, there is no need to give one months notice to the petitioner as per Rule 5(1) of the Rules, much less any opportunity before passing the impugned order of termination as contended. The learned counsel for the respondents also refers to the averments made in the counter affidavit on behalf of the respondents with respect to certain factual details, which warranted the respondents to pass the impugned order, invoking Rule 5(1) of the Rules. It is effectively contended that the petitioner is not entitled to complain against the impugned order of termination for want of notice to her, as she is entitled to claim the sum equivalent to the amount of her pay plus allowance for the period of notice, as informed to her by the impugned proceedings of the first respondent dated 26.8.1997 itself.

11. I have given careful consideration to the submissions made by the learned counsel for the respondents.

12. The order of termination dated 26.8.1997, which is under challenge, came to be passed by the first respondent, undoubtedly, by exercising the proviso to sub rule (1) of Rule 5 of the Rules.

13. It is true that the first respondent, in the latter limb of the impugned order of termination, directed that the petitioner shall be entitled to claim the sum equivalent to the amount of her pay plus allowances for the period of notice at the same rates at which she was drawing them immediately before the termination of her service. Thereafter, the second respondent, in his consequential proceedings dated 8.9.1997, of course, referring to the impugned order of termination dated 26.8.1997, informed all the Sections of the Institute that the services of the petitioner was already terminated by the proceedings of the first respondent dated 26.8.1997 an d requested all the Sections to collect the dues payable by her if any, with a further direction that no demand certificate with respect to the petitioner shall be forwarded to the administration on or before 16.9.1997 for further action.

14. As per the materials available on record, it is obvious that:
(i) the respondents have not paid the sum equivalent to the amount of her pay and allowance for the period of notice at the same rate at which she was drawing immediately before the termination of her service forthwith, viz., along with the order of termination dated 26.8.199 7;
(ii) the first respondent only directed that she shall be entitled to claim the said amount in lieu of one month notice;
(iii) as per the consequential circular of the second respondent issued to all the Sections of the Institute on 8.9.1997, the amount due to be paid under proviso to Rule 5(1) forthwith the order of termination, was not paid to the petitioner, even though the first respondent terminated her service with effect from 26.8.1997 itself;
(iv) the respondents propose to make the payment of the said amount contemplated under the proviso to Rule 5(1) of the Rules, only after getting a no demand certificate from all the Sections on or before 16.9.1997; and
(v) since the respondents have not paid the dues payable under proviso to Rule 5(1) of the Rules, the order of termination dated 26.8.1997 becomes unworkable from the said date and could not have been given effect to for want of compliance of the proviso to Rule 5(1) of the Rules.

15.1. Even though the learned counsel for the petitioner contends that the non payment of the sum equivalent to the amount of her pay and allowance for the period of notice at the same rate at which she was drawing immediately before the termination of her service forthwith in lieu of the notice, vitiates the impugned order of termination, I am unable to appreciate the same, as it is settled law that the termination made under Rule 5(1) of

the Rules could not be faulted on the ground that wages in lieu of the notice period were not paid simultaneously with the termination order, vide MUNICIPAL CORPN. OF DELHI (MCD) Vs. PREM CHAND GUPTA reported in (2000) 10 SCC 115.

15.2. That apart, when an action is sought to be initiated under Rule 5(1) of the Rules, terminating the services of the temporary employees of the

Government, it is trite law that no reason is required to be assigned for such order of termination.

16. In the instant case, the impugned order of termination was passed on 26.8.1997. However, the learned counsel for the respondents could not satisfy this Court that they have paid the petitioner the sum equivalent to the amount of her pay and allowance for the period of notice at the same rate at which she was drawing immediately before the termination of her service forthwith in lieu of the notice period till date. When the Rule is so clear and strict and the respondents desire to invoke such power, they are equally burdened with to comply with the requirements contemplated under the Rule relied upon.

17. Only in this context of the case, viz., the failure on the part of the respondents to make payment of a sum equivalent to the amount of her pay and allowance for the period of notice at the same rate at which she was drawing immediately before the termination of her service forthwith, the impugned order of termination requires the interference of this Court and accordingly, the order of termination dated 26.8.19 97 is set aside and the writ petitions are allowed. No costs. W.P.M.P. No.22557 of 1997 is closed.

Index : Yes
Internet : Yes

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